



Society of
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SIEL Newsletter

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From the SIEL President & SIEL ExCon

The 2023 SIEL Biennial Conference Venue is confirmed: Bogotá, Colombia

Dear SIEL members,

On May the 5th the SIEL ExCon voted for the next venue of the Biennial Conference. A consortium of Colombian universities led by Externado University will host SIEL 2023, therefore Bogotá will host the SIEL 2023 Biennial Global Conference entitled "*International Economic Law in Times of Geo-Political Confrontation and Geo-Economic Fragmentation*".

Save the dates: **12 - 14 July 2023.**

Warm regards,

Peter Van den Bossche, *President of SIEL and the SIEL Executive Council*

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SIEL Governance

Officers: Peter Van den Bossche (President); Isabelle Van Damme & Markus Wagner (Executive Vice-Presidents); Maria Laura Marceddu & Franziska Sucker (Treasurers); Weihuan Zhou & Yuka Fukunaga (SIEL Secretaries).

Executive Council: Olabisi D. Akinkugbe, Padideh Ala'i, Gracia Marín Durán, Tracey Epps, Ilaria Espa, Pasha L. Hsieh, Johanna Jacobsson, Jaemin Lee, Anna-Alexandra Marhold, Fabio Morosini, Suresh Nanwani, Tetyana Payosova, Maria J. Pereyra, Rodrigo Polanco, Victor Saco, Gerardo Vidigal, Todd Weiler, Andreas R. Ziegler.

Newsletter Editors

Susan Isiko Štrba

Johanna Jacobsson

Victor Saco

Should you wish to include an item in the next SIEL newsletter, please *contact us*.



The WTO Lives ... to Fight Another Day

Peter Van den Bossche

Rejoice! The WTO is alive and 'kicking'. The 12th WTO Ministerial Conference (MC12), held in Geneva from 12 to 17 June 2022, was enough of a success to restore our battered trust in the multilateral trading system and its principal institution, the WTO. After six days and five nights of arduous negotiations, WTO Members demonstrated that they are still willing and able to compromise to reach agreement, and this despite of, or perhaps because of, the multiple crises facing the world today, including an all-out war between two of the WTO's Members. MC12 was a success if only because it did not end in failure. Many of us had of course hoped for more substantial results, but at the same time we all feared a much worse outcome. As was widely reported, the outcome of MC12 hung in the balance until the closing hours of the conference. The glass is indeed only half full. However, when one is in the desert – and the WTO has been there for years – each drop of water is most welcome and allows one to carry on. One should look at the results of MC12 in this way.



A first and long-awaited MC12 result is the Agreement on Fisheries Subsidies (see footnote 1). Under the terms of this Agreement, subsidies contributing to illegal, unreported and unregulated fishing (IUU) and subsidies regarding overfished stocks are prohibited and stricter notification and transparency requirements regarding fisheries subsidies have been adopted. Moreover, to help developing country Members to implement the obligations under the Agreement, a voluntary WTO funding mechanism for technical and capacity building assistance is established. Members were, however, unable to agree on the prohibition of the most problematic of fisheries subsidies, namely the subsidies contributing to overfishing and overcapacity. The failure to reach agreement on these subsidies is a time bomb under the Agreement because Article 12 thereof provides that if no comprehensive disciplines are adopted on these subsidies within four years of the entry into force of the Agreement, the latter shall stand immediately terminated. Much, if not most, work on fisheries subsidies remains to be done.

A second result of MC12 concerns the TRIPS waiver and the Ministerial Declaration on the COVID-19 Pandemic (see footnote 2). The TRIPS waiver is limited in scope as it only covers COVID-19 vaccines and not diagnostics and therapeutics. The waiver is also limited in time and will end after five years. It may well be argued that this waiver, adopted two years and a half after the start of the pandemic and at a time that there is massive oversupply of COVID-19 vaccines on the world market, comes far too late. A decision on the possible extension of the scope of the waiver to COVID-19 diagnostics and therapeutics must be taken before the end of 2022. While discussions on such extension were initiated at the TRIPS Council meeting on 6 July 2022, it is not likely that the extension will be agreed on. The Ministerial Declaration on the COVID-19 Pandemic calls upon Members to take action designed to facilitate trade in essential medical goods in times of public health emergency, rather than adopt export restrictions or other trade restrictive measures. In the Declaration, Members primarily draw the painful and costly lessons learned from the pandemic. The Declaration may thus be of some help in addressing future pandemics, albeit that Members barely undertake any additional commitment on how to respond to such future pandemics.

A third result of MC12 is the extension of the moratorium on customs duties on electronic transmissions, i.e., on e-commerce, until 31 March 2024 at the latest (see footnote 3). Failure to extend this moratorium would have had a negative effect on the continued expansion of the digital economy from which consumers and small and medium-size businesses in both developed and developing countries benefit significantly. However, it is estimated that in the period 2017-2020, developing countries and LDCs lost \$56 billions of tariff revenue because of the moratorium (see footnote 4). Hence, India and South Africa strongly objected to a further extension of the moratorium. Eventually they did not prevent the extension, but it was agreed to 'intensify' the discussions on the moratorium and to conduct period reviews on the scope and the impact of the moratorium. On customs duties on e-commerce, Members merely decided to kick the can down the road.

A fourth and last MC12 result to be mentioned is the commitment of Members to work towards the necessary institutional reform of all functions of the WTO, i.e., the negotiating function, monitoring function and dispute settlement function (see footnote 5). However, while there is a consensus on the need of WTO institutional reform, there is no agreement at all on the kind of reform needed.

Regarding the reform of the dispute settlement system – the urgency of which is explicitly recognized – Members are committed to conduct discussions with the view to having a fully- and well-functioning dispute settlement system by 2024 (see footnote 6). One can only hope that such discussions will allow for the restoration of the currently dysfunctional dispute settlement system.

While the results of MC12 are limited in scope and time, they show that the WTO is still alive and that there is some room for cautious optimism regarding the future of the multilateral trading system. Whether this optimism is justified, time will tell.

Peter Van den Bossche

20 July 2022

1. See Ministerial Decision, Agreement on Fisheries Subsidies, adopted 17 June 2022, WT/MIN(22)/33.
2. See Ministerial Decision on the TRIPS Agreement, adopted 17 June 2022, WT/MIN(22)/30; and Ministerial Declaration on the WTO Response to the COVID-19 Pandemic and Preparedness for Future Pandemics, adopted 17 June 2022, WT/MIN(22)/29.
3. Ministerial Decision on the E-Commerce Moratorium and Work Programme, adopted 17 June 2022, WT/MIN(22)/32.
4. Rashmi Banga, WTO Moratorium on Customs Duties on Electronic Transmissions: How much tariff revenue have developing countries lost?, South Centre Research Paper 157, 3 June 2022.
5. Ministerial Conference, MC12 Outcome Document, adopted 17 June 2022, WT/MIN(22)/24, para. 3.
6. *Ibid.*, para. 4.

SIEL Conversations

Sanctions and the Rules-Based International Economic Order

The past few years have seen an intensification of so-called international sanctions, unilateral economic measures adopted by states (and discussed for adoption by the European Union) to respond to what they perceive as undesirable behaviour performed or tolerated by other states. The recent wave of economic sanctions imposed on Russia following the invasion of Ukraine is unprecedented in many ways. At the same time, it follows a trend of unilateral behavior replacing action within global fora such as the World Trade Organization as a means of addressing economic and political disputes at the international level.

As a matter of their consequences for the global economic order, this multiplication of unilateral measures, compounded with the demise of the WTO Appellate Body, may signal the breakdown of a rules-based multilateral order. Some of the actors adopting these measures, however, claim that they are in fact the instruments required to preserve rules-based interaction in the absence of authoritative compulsory adjudication.

In this SIEL Conversation, participants will examine this wave of unilateral economic measures, discuss their implications for the global political and economic order, and consider the role of law and the prospects for legal considerations, within and between states, in this so-called "geoeconomic" world order.

When

Monday 25 July
3 pm Geneva Time

Participants

Chad P. Bown, Ingrid Wuerth, Samantha Atayde, Michael Ewing-Chow, Vitaliy Pogoretsky

More information and registration link

<https://www.sielnet.org/siel-conversations/07-2022-siel-conversation-25-july-2022/>

"Beyond State Consent to International Jurisdiction"

The State Consent to International Jurisdiction (SCIJ) project, funded by the Research Council of Norway and conducted at PluriCourts (University of Oslo) is issuing a Call for Abstracts for its closing conference entitled "Beyond State Consent to International Jurisdiction". This conference has been tentatively scheduled for 29-30 September and will be held entirely online.

Topics will include: (1). consent to jurisdiction as compared to applicable law; (2). interpretation methods; (3). unique aspects of specific courts or legal systems that may facilitate or impede consent; (4). redesigning consent in the context of international law reform

The Organising Committee (consisting of Prof. dr. Freya Baetens, Dr Emma Brandon and Dr Nicola Strain) welcomes abstracts from academics as well as practitioners, including staff of adjudicatory institutions and international organisations. Papers should present innovative ideas, be unpublished at the moment of presentation, and be at an advanced stage of completion.

The deadline for submission of abstracts is 25 August 2022. More information on submission of abstracts and bios, can be found [here](#).

JIEL: Second annual Junior Faculty Forum

The Journal of International Economic Law (JIEL) is pleased to announce its second annual Junior Faculty Forum to be held in hybrid or virtual format on September 23-24, 2022, on the sidelines of the American Society of International Law (ASIL) International Economic Law Interest Group Biennial Conference. Last year's inaugural Forum featured scholars from ten different countries on five continents; some of those articles were then published in JIEL. Junior scholars are encouraged to submit their abstracts for consideration by no later than July 8, 2022.

More information on eligibility and how to submit can be found [here](#).

Publications

Bashar Malkawi and Christina C. Benson. Iraq Back on Track: The Case for Expediting WTO Accession of "Fragile and Conflict Affected" ("FCA") Countries, 47 North Carolina Journal of International Law 133-191 (2022)

Bryan Mercurio and Ronald Yu. "Regulating Cross-Border Data Flows: Issues, Challenges and Impact" (Anthem Press, 2022)

Fabio Morosini and Michelle Ratton Sanchez-Badin (eds.), O Direito das Relações Econômicas Brasil-China: evidências empíricas (Lumen Juris, 2022)

Henri Culot, Hélène Tourard, Philippe Vincent. Pays émergents et droit international économique (Two volumes: "À la recherche d'une définition" and "Les grands équilibres mondiaux")(Larcier, 2022)

José Manuel Álvarez Zárate and Maciej Zenkiewicz. El derecho internacional de las inversiones (Universidad Externado, 2021). Available in open access here [<https://publicaciones.uexternado.edu.co/gpd-el-derecho-internacional-de-las-inversiones-9789587907049.html>]

Lisa Toohey, Markus Wagner, Elizabeth Thurbon, Elizabeth Sheargold and Liam Mackay. Weaponised Trade: Mapping the Issues for Australia, 30 June 2022, available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4154030

Maria Laura Marceddu & Pietro Ortolani, ISDS reform and air guitar: A response to Grant and Kieff (EJIL:Talk!, 2022) <https://www.ejiltalk.org/isds-reform-and-air-guitar-a-response-to-grant-and-kieff/>

Markus Wagner and Weihuan Zhou. A Road to Rapprochement for Australia-China Relations, East Asia Forum, 5 July 2022, <https://www.eastasiaforum.org/2022/07/05/a-road-to-rapprochement-for-australia-china-relations> (co-authored with Lisa Toohey and Weihuan Zhou).

Markus Wagner and Weihuan Zhou. World Trade Organization steps back from the brink of irrelevance – but it's not fixed yet, *The Conversation*, 22 June 2022, available at <https://theconversation.com/world-trade-organization-steps-back-from-the-brink-of-irrelevance-but-its-not-fixed-yet-185373>

R. Leal-Arcas, *International Trade Relations of the European Union: A Legal and Policy Analysis* (Palgrave Macmillan, 2022)

R. Leal-Arcas (ed.), *International Trade and Sustainability: Perspectives from Developing and Developed Countries* (Palgrave Macmillan, 2022)

Suresh Nanwani. The New Development Bank and Strategic Partnerships (1 June 2022) Commentary, *Global Policy Opinion*, <https://www.globalpolicyjournal.com/blog/01/06/2022/new-development-bank-and-strategic-partnerships> (open access)

Suresh Nanwani. Asian Development Bank's equity investments in South Asia: Case studies in India and Bhutan 14 *NUJS L. Review* (2021), <http://nujlawreview.org/wp-content/uploads/2022/02/14-4-Nanwani-Final-Final.pdf> (open access)

Weihuan Zhou, Huiqin Jiang and Zhe Chen, 'Trade vs. Security: Recent Developments of Global Trade Rules and China's Policy and Regulatory Responses from Defensive to Proactive', (2022) *World Trade Review* 1-19 (online).

Weihuan Zhou and Xiaomeng Qu, 'Confronting the 'Non-Market Economy' Treatment: The Evolving World Trade Organization Jurisprudence on Anti-Dumping and China's Recent Practices', (2022) *Journal of International Dispute Settlement* 1-22 (online).

Thanks and Farewell



Farewell Susan Isiko Strba

The editors of the SIEL NL want to thank Susan for her splendid work on the SIEL Newsletter. Susan was always an example of organization, diligence, but above all, camaraderie. All the best for your new projects dear Susan.